

EXHIBIT G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

NESTOR ALMONTE,

Plaintiff,

-against-

4376 MORRIS PARK, LLC d/b/a F&T MANAGEMENT
CO., INC.,

Defendants.

- - - - -x

600 Old Country Road
Garden City, New York

February 26, 2015

10:30 a.m.

DEPOSITION of KALMAN TABAK, a witness on
behalf of the Defendant herein, held at the above
time and place, taken before Karen Zammit, a
Shorthand Reporter and Notary Public of the State
of New York, pursuant to Rule 26 et seq. of the
Federal Rules of Civil Procedure and stipulations
between Counsel.

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APPEARANCES:

VALLI KANE & VAGNINI, LLP

Attorneys for Plaintiff

600 Old Country Road

Garden City, New York 11530

BY: ROBERT P. VALLETTI, ESQ.

BY: ROBERT J. VALLI, JR., ESQ.

GOLDBERG & WEINBERGER, P.C.

Attorneys for Defendant

630 Third Avenue

New York, New York 10017

BY: STUART WEINBERGER, ESQ.

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STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED, by and among counsel for the respective parties hereto, that the filing, sealing and certification of the within deposition shall be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to form of the question, shall be reserved to the time of the trial;

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed before any Notary Public with the same force and effect as if signed and sworn to before the Court.

* * *

1

2 K A L M A N T A B A K, the Witness herein,
3 having first been duly sworn by the Notary
4 Public, was examined and testified as follows:

5 EXAMINATION BY

6 MR. VALLETTI:

7 Q What is your name?

8 A Kalman Tabak.

9 Q What is your address?

10 A 21-37 79th Street, Brooklyn, New
11 York 11214.

12 Q Good morning, Mr. Tabak.

13 A Good morning.

14 Q My name is Robert Valletti and I am
15 here representing the plaintiff, Nestor Almonte,
16 in this case.

17 I am going to ask you a series of
18 questions this morning relating to a suit
19 instituted by Mr. Almonte for recovery of unpaid
20 wages.

21 A Yes.

22 Q If you don't understand anything
23 that I say or any question that I ask you, please
24 let me know and I will be happy to rephrase it.
25 If you do answer we will all assume that you

1 K. Almonte

2 understood and that your answer is responsive.

3 Also, if you could, please keep
4 your answers verbal. The court reporter cannot
5 take down a head nod or a gesture. Do you
6 understand?

7 A Yes.

8 Q Please let me finish the question.
9 We cannot have two people speaking at once. The
10 court reporter may be skilled, but she cannot
11 take down two people speaking at the same time.

12 Also, complete your entire answer
13 before I ask my next question. If you need more
14 time to answer, just let me know. If terms of a
15 break, if you need one, I will be happy to do
16 that.

17 If there is a pending question,
18 please answer that first before we take the
19 break. Do you understand these ground rules?

20 A Yes.

21 Q Have you ever given testimony
22 before?

23 A No.

24 Q Are you currently taking any
25 medication today that could impair your ability

1 K. Almonte

2 to testify?

3 A No.

4 Q You are aware that today you are
5 under oath and that the testimony that you are
6 going to give is to be the truth and nothing but
7 the truth?

8 A Yes.

9 Q You gave your current address
10 before as 2137 79th Street in Brooklyn; is that
11 correct?

12 A Yes.

13 Q How long have you lived at that
14 address?

15 A Since 1997.

16 Q Were you present for any other
17 depositions in this matter?

18 A One deposition over at Stuart's
19 office.

20 Q Was that the deposition of Nestor
21 Almonte?

22 A Yes.

23 Q Do you recall the date of the
24 deposition?

25 A No.

1 K. Almonte

2 Q Why were you present at that
3 deposition?

4 A I was trying to understand what he
5 is trying to -- what this lawsuit is all about.
6 To me it didn't make any sense.

7 Q Had you seen a copy of the
8 Complaint before sitting in on that deposition?

9 A No.

10 Q You had not read any of the
11 allegations?

12 A I have heard about it verbally, but
13 I have not read anything.

14 Q When you said you heard about it
15 verbally, who did you hear it from?

16 A Stuart.

17 Q Without getting into the substance
18 of that, did you speak to anyone else about the
19 claims?

20 A It could be Charlie.

21 Q When did you speak to Charlie?

22 A I don't recall, but I remember
23 discussing it with him.

24 Q When you say Charlie do you mean
25 Charlie Clarke?

1 K. Almonte

2 A Yes.

3 Q Is his Hebrew name Chanina Klahr?

4 A Yes.

5 Q Is Mr. Klahr known by any other
6 names other than Charles or Charlie Clarke?

7 A No.

8 Q Is Clarke a business name that he
9 uses?

10 A It is very common in this business
11 that people have a user name.

12 Q The spelling of the last name is
13 C-L-A-R-K-E, correct?

14 Q When you spoke to Charlie about
15 these claims what type of things did you discuss
16 specifically?

17 A I was just generally in shock of
18 what was going on, that he was fabricating this
19 story, that's all. It was just mind boggling to
20 me.

21 Q When you say fabricating the story,
22 who did you believe was fabricating a story?

23 A I knew that he was a superintendent
24 and I never had any knowledge of his son, so it
25 was shocking to me.

1 K. Almonte

2 Q Who is his son?

3 A I don't know.

4 Q You don't know who his son is?

5 A No.

6 Q Does the name Manuel Almonte mean
7 anything to you?

8 A No, he was called Lopez, that's all
9 I know.

10 Q Did you know Lopez' first name?

11 A No.

12 Q Lopez worked for what companies?

13 A 437 Morris Park LLC.

14 Q Did he ever work for any other
15 companies?

16 A I know he was handling another
17 building on 1195 Sherman Avenue.

18 Q What do you mean handling?

19 A Dealing with the complaints, you
20 know, do whatever a superintendent needs to do.

21 Q When you say a super, what a super
22 needs to do, was he the super of 1195 Sherman?

23 A I think we had some type of a
24 superintendent, a live-in super who responded to
25 emergencies.

1 K. Almonte

2 As far as dealing with the
3 complaints in the apartments I think that was --
4 that superintendent was lacking and he was
5 filling in, if I remember correctly.

6 Maybe there was nobody else there
7 and he was just coming in to do the complaints,
8 but I think there was a period of time that there
9 was somebody there. I don't know exactly what
10 period he was there.

11 Q I am going to back up just a second
12 here and talk quickly about the company of 437
13 Morris Park. Are you an owner or a member or a
14 principle, something else?

15 A Member of the LLC.

16 Q Who are the other members, if there
17 are any?

18 A It is just me and Abraham
19 Finkelstein.

20 Q What about the 1195 Sherman LLC?

21 A I don't think I am involved in that
22 LLC.

23 Q You don't think you are involved?

24 A Right.

25 Q You are not an owner, member,

1 K. Almonte

2 principle, anything of that sort?

3 A I would have to check how it is set
4 up exactly. As far as the interest ownership in
5 that LLC, I am not sure.

6 Q Are there documents that would show
7 that you are either an owner or have an ownership
8 interest in that?

9 A I don't know exactly what those
10 documents show. I have to verify that with
11 Abraham. That building is a lease. It is a
12 different setup.

13 MR. VALLETTI: Okay. I will make a
14 demand for any documents showing the
15 ownership or members, principles, things of
16 that nature for 1195 Sherman. I will have
17 that put in writing.

18 MR. VALLETTI: Okay.

19 Q What other members are there, if
20 any, for 1195 Sherman?

21 A I think Abraham.

22 Q To your knowledge he is the sole
23 principle?

24 A Yes.

25 Q Did Charlie Clark have any

1 K. Almonte

2 ownership interest in 437 Morris Park?

3 A No.

4 Q The same question for 1195 Sherman,
5 did Charlie have any ownership interest in that?

6 A No.

7 Q What was Charlie then while working
8 for 437 Morris Park?

9 A Building manager.

10 Q When you say building manager, did
11 he just manage 1195 Sherman or was he responsible
12 for other buildings?

13 A He was responsible for other
14 buildings as well.

15 Q What other buildings was he
16 responsible for?

17 A He was responsible for 1195
18 Sherman, he was responsible for 1056 Boynton, and
19 he was responsible for 1101 Manor in the Bronx.

20 Q Were his duties the same generally
21 speaking for these properties?

22 A Yes.

23 Q Do you know what his duties were?

24 A Yes.

25 Q Could you tell me the duties,

1 K. Almonte

2 please?

3 A His duties were to run the
4 maintenance in these buildings.

5 Q Could you elaborate on what it
6 means to run the maintenance of the buildings?

7 A Make sure that the building is
8 clean, make sure there is oil in the boiler, the
9 boiler is working, the elevators are working, the
10 people that are responsible to do repairs are
11 doing repairs, getting the complaints and giving
12 them over to the proper people that need to do
13 it, inspecting that they are done.

14 Q As building manager did he have any
15 superiors?

16 A I don't understand the question.

17 Q Did he have a boss, were you his
18 boss?

19 A Yes.

20 Q You were Charlie's boss in his
21 responsibilities for 437 Morris Park?

22 A Yes.

23 Q At 1195 Sherman?

24 A Yes.

25 Q Did you give him orders directly?

1 K. Almonte

2 A Yes.

3 Q What kind of orders did you give
4 him?

5 A In general he had his own
6 discretion how to run the building, but if there
7 was any questions that needed decision he would
8 bring it to my attention and I would decide.

9 Q Other than the orders that Charlie
10 gave, did you personally give orders to anyone
11 else other than Charlie?

12 A Yes.

13 Q Who did you give orders to?

14 MR. WEINBERGER: I object to the
15 form. Do you understand the question?

16 THE WITNESS: It is a very general
17 question.

18 MR. WEINBERGER: If you understand
19 the question you can answer it.

20 THE WITNESS: I am not sure.

21 MR. VALLETTI: Okay.

22 Q At 437 Morris Park, other than
23 Charlie did you ever give any orders to anyone?

24 A Yes, I would come by the building
25 and do my own inspections on a regular basis.

1 K. Almonte

2 Q You did inspections at 437 Morris
3 Park?

4 A Yes. Is anything else relevant
5 besides 437?

6 Q This regular basis, how often did
7 that occur?

8 A At times on a daily basis, at times
9 on a weekly, depending on the inspections that
10 the City was scheduling for to be on top of it to
11 make sure that the inspections would go well.
12 That was basically my role.

13 Q You said that the City was giving
14 you directives or inspections of some sort.
15 Could you elaborate on what you mean by that?

16 A The building has a program in the
17 building. The building is operating as a
18 homeless shelter.

19 Q It is City sanctioned?

20 A City funded.

21 Q Going back to the orders, who were
22 the people at 437 Morris Park that you gave
23 orders to during any of your regular visits?

24 A I would come to the building and if
25 the building was dirty I would reach out to the

1 K. Almonte

2 porter. If I walked into an apartment and saw
3 repairs that needed to be done I would reach out
4 to the person that is responsible for doing
5 repairs.

6 If I felt something was important
7 to address and he should stop doing what he is
8 doing and focus on what I think is more
9 important, I would direct him.

10 Q You had said the porter. Can you
11 name the porter during the time starting with
12 2011, who was the porter?

13 A I don't know names. I would come
14 to the building and I know who was there, I don't
15 know names.

16 Q In terms of the repairs you said
17 you would reach out to the person who was
18 responsible for the repairs. At 437 Morris Park
19 who was responsible for the repairs generally?

20 A Lopez.

21 Q What was his position there?

22 A Super.

23 Q Do you recall the first time that
24 you at least knew of Lopez working for the
25 company?

1 K. Almonte

2 A No.

3 Q You don't recall when he started?

4 A No.

5 Q Was it more than two years ago?

6 A Yes.

7 Q About three or four years ago?

8 A Yes.

9 Q When you first started working was
10 he the super of 437 Morris Park or something
11 else?

12 A As far as I can remember he was the
13 super.

14 Q He had not started as a handyman or
15 a porter before that?

16 A It could be, but I don't know. If
17 somebody was a handyman or a porter or a super I
18 would not know.

19 Q Do you hire and fire anyone?

20 A No.

21 Q Who is responsible for that for 437
22 Morris Park?

23 A Charlie.

24 Q Are you familiar with the
25 application process for an employee?

1 K. Almonte

2 A No.

3 Q What about termination, do you
4 terminate any employees at 437 Morris Park
5 generally?

6 A No.

7 Q Do you have the authority to do it
8 or you have never actually done it before?

9 A I have the authority to do it.

10 Q During your regular visits to 437
11 Morris Park were there specific portions of the
12 building that you would inspect or you would
13 inspect almost anything?

14 A I concentrated on the public areas
15 and the apartments.

16 Q Were there any offices at 437
17 Morris Park?

18 A Yes.

19 Q Where was the office located?

20 A In the basement.

21 Q This office, was this for 437
22 Morris Park LLC or some other entity?

23 A As far as I know 437 Morris Park
24 LLC.

25 Q Was any other business handled in

1 K. Almonte

2 that office other than the business of 437 Morris
3 Park?

4 A He ran the management for the other
5 buildings out of that office, so there was the
6 other four buildings that I mentioned.

7 Q Was there anything written on the
8 door of that office?

9 A I don't recall.

10 Q I have seen through the review of
11 the discovery an entity called F&T Management.
12 Could you tell me what F&T Management is?

13 A As far as I know it is not an
14 entity in itself. It was our vendors. We have
15 many different properties and our vendors --
16 basically the bills are paid by the entities, by
17 the LLCs, but F&T Management stands for
18 Finkelstein, my partner, and myself is T.

19 They basically identify our group
20 of buildings with F&T Management. That belongs
21 to Finkelstein and Tabak and they called it F&T
22 Management.

23 Q How many properties in total does
24 F&T Management account for?

25 MR. WEINBERGER: Objection. You

1 K. Almonte

2 can answer it.

3 A I don't know, probably a dozen or
4 maybe more.

5 Q There are other entities than 437
6 Morris Park and 1195 Sherman; is that correct?

7 MR. WEINBERGER: Objection as to
8 the form.

9 A I just mentioned to you before the
10 four buildings that he manages.

11 Q I am talking specifically about F&T
12 Management. You said there were a dozen that F&T
13 Management is known as --

14 MR. WEINBERGER: He didn't say
15 that. Objection.

16 MR. VALLETTI: Okay. I'll rephrase
17 the question.

18 Q The 12 buildings, does Finkelstein
19 and Tabak own those buildings?

20 A Yes.

21 Q What other buildings other than 437
22 Morris Park and 1195 Sherman?

23 MR. WEINBERGER: Objection as to
24 relevance. Why is this relevant?

25 MR. VALLETTI: The relevance is

1 K. Almonte

2 that my client worked for more than these
3 two entities and the hours that he put in
4 were supposedly paid through two entities
5 and the ones that we are missing might need
6 to be added. You can answer.

7 Q What other entities?

8 A He didn't work for anything else
9 other than these four buildings.

10 Q What are the four buildings?

11 A He worked on the buildings that
12 Charlie managed. The four buildings were 437
13 Morris Park, 1195 Sherman, 1056 Boynton and 1101
14 Manor. There is no other involvement that he was
15 involved with if he worked in other buildings.

16 Q What do you mean?

17 A I am saying the relevance that you
18 are referring to that he worked in other
19 properties, it would be within these four. If he
20 worked in other properties, that's what I am
21 saying.

22 MR. VALLETTI: Thank you for
23 clarifying.

24 Q During those site visits, the
25 regular visits that you made, you would visit the

1 K. Almonte

2 basement; is that correct?

3 A Yes.

4 Q Could you describe the basement of
5 437 Morris Park, you said there was an office
6 there. What else is down there, if anything?

7 A The super's apartment, which is
8 pretty close to the office.

9 Q Was it ten feet away, 20 feet away?

10 A About 30 feet away.

11 Q Is it one hallway or is it an open
12 space, how were they in spacial relation to each
13 other, were there any turns or just straight?

14 A There was an entrance to the office
15 through the backyard. I would say that the door
16 of the office to the door of the super from the
17 backyard is probably 30 feet, maybe a little
18 more.

19 Q Straight line of sight?

20 A Yes.

21 Q We had placed Lopez working for the
22 company about three or four years ago. Did he
23 occupy the super's apartment?

24 A Yes.

25 Q Do you know when he took possession

1 K. Almonte

2 of that apartment?

3 A No.

4 Q Roughly could it have been around
5 the time that he started working at 437 Morris
6 Park?

7 A That makes sense.

8 Q Do you know who else he lived with?

9 A No.

10 Q Could you describe the apartment
11 for the super in 437 Morris Park?

12 A I think it is a two bedroom with a
13 large living room kitchen area.

14 Q How many means of egress are in
15 that apartment?

16 A One.

17 Q If a person were a super without a
18 family would they be given a two-bedroom
19 apartment or could you put a space for a
20 one-bedroom apartment or was it based on
21 necessity or something along those lines?

22 MR. WEINBERGER: Objection.

23 Asking for speculation.

24 Q What was the policy and practice of
25 giving a super an apartment for 437 Morris Park?

1 K. Almonte

2 A To have somebody on site.

3 Q What was the purpose of having the
4 super on site?

5 A If there is an emergency that he
6 can deal with it quickly. He would not be a
7 distance from where he needs to do the emergency.

8 Q Did you know Lopez by any other
9 names?

10 A No.

11 Q To your understanding Lopez was the
12 super at 437 Morris Park but also worked in 1195
13 Sherman, 1056 Boynton and 1101 Manor?

14 A I remember 1195 Sherman, I don't
15 know about 1056.

16 Q Did he work at 1101 Manor?

17 A Maybe he did, I don't know. It is
18 not something that I would know.

19 Q Is it possible that he worked
20 there?

21 A Yes.

22 Q 1056 Boynton, do you have any
23 knowledge that he worked there?

24 A No, but anything is possible.

25 Q The two-bedroom apartment in the

1 K. Almonte

2 basement, that was 30 feet away from the entrance
3 to the basement of the facility, correct?

4 A There was an entrance door to the
5 office and over about 30 feet was an entrance to
6 his apartment.

7 Q During the regular visits which
8 were daily or weekly, you would go down to the
9 basement?

10 A I generally went to the apartments
11 in the public area, but I have definitely visited
12 the basements.

13 Q While you were in the basement did
14 you ever stop by that super's apartment for the
15 time period of 2011?

16 A I don't recall.

17 Q How about during 2012, did you ever
18 stop by the super's apartment?

19 A I don't recall in general.

20 Q How about in 2013, did you ever
21 stop by the super's apartment?

22 A I don't recall.

23 Q If there were a problem in the
24 building where would you expect to find the super
25 if you needed to tell someone to do a repair?

1 K. Almonte

2 A During the working hours?

3 Q Yes.

4 A Somewhere in the building doing
5 repairs.

6 Q What about after working hours?

7 A He would be in the apartment. I
8 would get him on his cell phone. I used to call
9 him on his cell.

10 Q Generally speaking, let's stick to
11 these four buildings, are you familiar with how
12 many supers each one of these buildings has?

13 A One.

14 Q As to the buildings having one
15 super, are you aware of supers at other buildings
16 handling calls for different locations?

17 A I am not aware of the setup, how
18 that was set up.

19 MR. WEINBERGER: Let's take a
20 quick break.

21 MR. VALLETTI: Sure.

22 [Whereupon, after a short recess
23 was taken, the following was had:]

24 CONTINUED EXAMINATION

25 BY MR. VALLETTI:

1 K. Almonte

2 Q Mr. Tabak, are you familiar with
3 the payroll system in 437 Morris Park?

4 A No.

5 Q You don't know the company that
6 does the payroll?

7 A No.

8 Q Does Charlie handle payroll?

9 A Yes.

10 Q Before you had said that Charlie
11 was the manager of the buildings that you had
12 listed, he was responsible for those?

13 A Yes.

14 Q What about the LLC itself, 437
15 Morris Park LLC, is there a manager of that LLC?

16 A What management needs to be done?

17 Q Something that handles the business
18 operations of 437 Morris Park LLC, in other
19 words, are there any other people employed with
20 437 Morris Park LLC other than yourself and
21 Charlie?

22 A Abraham would be handling that.

23 Q That's in terms of other personnel,
24 there is nobody else?

25 A No.

1 K. Almonte

2 Q In terms of the superintendent's
3 responsibilities, is he responsible for the
4 building itself only or are there things perhaps
5 around the building that he is supposed to be
6 responsible for such as cleaning and snow
7 removal, things like that?

8 A I don't know what is broken down
9 between the porter and the super. I don't know
10 exactly the duty of what the super does and what
11 the porter does.

12 The building needs to have snow
13 removal and it needs to be cleaned and the
14 repairs need to be done. You have the super and
15 the porter taking care of that.

16 Q Are you aware that your company has
17 penalties to a super who does not perform
18 cleaning duties of a sidewalk?

19 A That who gets a penalty?

20 Q The super is penalized by a
21 deduction from his pay, are you aware of that?

22 A If he doesn't do what?

23 Q Removal of snow or clean the
24 sidewalk, something that is issued a summons from
25 the City?

1 K. Almonte

2 A No, I am not aware of that.

3 MR. VALLETTI: Please mark this as
4 Plaintiff's Exhibit 1. It is a two-page
5 document.

6 [Whereupon, the document was
7 hereby marked as Plaintiff's Exhibit 1 for
8 identification, as of this date, by the
9 reporter.]

10 Q Mr. Tabak, I will show you a
11 two-page document. They are two different
12 documents. I will show it to your attorney
13 first. When you are done reviewing this please
14 let me know.

15 A Okay.

16 Q I will direct your attention to the
17 first page, Bates number 357. That's defendant's
18 Bates numbers. Could you read below this line?

19 A "Effective June 24, 2013 super has
20 to do" -- I can't read it -- "of sidewalks and
21 curbs before 8:00 a.m. Any summonses received
22 after June 24, 2013 will affect a penalty for the
23 negligence which is deducted from paycheck."

24 Q From that policy any summons issued
25 to the super has a deduction from his pay. What

1 K. Almonte

2 is that deduction for?

3 MR. WEINBERGER: Objection. You

4 can answer it.

5 A I have no idea. It is the first

6 time that I saw it, I don't know.

7 Q What is the date on that document?

8 A May 23, 2013.

9 Q There was a policy in place in at
10 least 2013 of there being deductions from
11 people's pay apparently for negligence in
12 receiving a summons from New York City?

13 MR. WEINBERGER: Objection.

14 A I didn't do this agreement, so I
15 don't know.

16 Q Does it look like an agreement?

17 A Not an agreement. I didn't write
18 this. Whoever wrote it needs to answer what this
19 means.

20 Q What is the company name?

21 A 437 Morris Park LLC.

22 Q Are you typically unfamiliar with
23 the policies of your own company?

24 MR. WEINBERGER: Objection.

25 A I have no idea if this was enforced

1 K. Almonte

2 or if he just wrote this. I need to ask him. If
3 I would see something like that I would probably
4 have asked him.

5 Q What would you ask him?

6 A What does it mean.

7 Q Who would you have asked?

8 A Charlie.

9 Q Did Charlie make this policy?

10 A I don't think there is anybody else
11 that is involved that could do this other than
12 him.

13 Q Looking at Page 2, I will direct
14 your attention to this line. Please read that.

15 A "Any summonses received after June
16 24, 2013 will affect a penalty for negligence
17 which is deducted from paycheck."

18 Q That coincides with the other
19 document, correct?

20 A Yes.

21 Q What other policies do you have in
22 your company that deducts from paychecks of
23 employees?

24 A I am not familiar.

25 Q You don't know if there are other

1 K. Almonte

2 policies that deduct from paychecks?

3 A No.

4 Q Do you know of any agreements that
5 employees can enter into to have deductions made
6 from their paychecks or were they just
7 implemented unilaterally by the company?

8 MR. WEINBERGER: Objection. Do
9 you understand the question? If you can
10 understand it you can answer it.

11 A I am not familiar.

12 Q The employee name, who is listed?

13 A 437 Morris Park.

14 Q That's the company name, I am
15 talking about the employee name?

16 A Nestor Almonte.

17 Q Who is Nestor Almonte?

18 A Lopez.

19 Q That's Lopez?

20 A Yes.

21 Q His first name was Nestor?

22 A Yes, or the last name first. I
23 don't know how they write it.

24 Q Are you familiar with the process
25 regarding the work orders of your company, 437

1 K. Almonte

2 Morris Park?

3 A No.

4 Q Charlie handles that sort of thing?

5 A I don't know.

6 Q Would it at least refresh your
7 recollection if you had seen some work orders
8 from 2011 as to when he began working for you?

9 A No, I don't know.

10 MR. VALLETTI: Please mark this as
11 Plaintiff's Exhibit 2.

12 [Whereupon, the document was
13 hereby marked as Plaintiff's Exhibit 2 for
14 identification, as of this date, by the
15 reporter.]

16 Q Please look at this document. Have
17 you ever seen a document like this before, not
18 this exact one, something similar?

19 A I don't look -- my inspections
20 involved the physical, not the paperwork and the
21 details of how things are done.

22 Q It is your testimony that in owning
23 the company you have never seen a work order like
24 this?

25 A Right.

1 K. Almonte

2 Q I will direct your attention to the
3 name that appears on the left, Lopez. To your
4 understanding Lopez is the same person as Nestor
5 Almonte, that's how you knew him?

6 A Yes.

7 Q What is the date there?

8 A April 20, 2011.

9 Q Basically the same type of document
10 here, it is Bates 317 to 327. I will direct your
11 attention to Page 326. Can you note the date for
12 me?

13 A March 23, 2011.

14 Q The name Lopez on the right-hand
15 side, do you understand that to be Nestor
16 Almonte?

17 A I guess so.

18 Q You testified earlier you didn't
19 know who Manuel Almonte is; is that correct?

20 MR. WEINBERGER: Objection. I
21 don't believe he said that.

22 Q Do you know Manuel Almonte is?

23 A No.

24 Q You don't know who that is?

25 A No.

1 K. Almonte

2 Q Earlier you testified that Lopez
3 was the super of 437 Morris Park, correct?

4 A Yes.

5 MR. VALLETTI: Please mark this as
6 Plaintiff's Exhibit 3.

7 [Whereupon, the document was
8 hereby marked as Plaintiff's Exhibit 3 for
9 identification, as of this date, by the
10 reporter.]

11 Q You will show you Plaintiff's
12 Exhibit 3. Do you know what that is?

13 A No.

14 Q Could you read the employee name?

15 A Manuel Almonte.

16 Q Can you read the date of the
17 document?

18 A June 1, 2012.

19 Q What is the job title of that
20 individual?

21 A Super.

22 Q Generally speaking, would a super
23 of your company receive pay?

24 MR. WEINBERGER: Objection as to
25 form.. you can answer it.

1 K. Almonte

2 Q I am talking about 437 Morris Park.

3 Would the super of 437 Morris Park get paid for

4 his work?

5 A Of course.

6 Q Was it always monetary compensation

7 or could it be other?

8 A As far as I know only monetary.

9 Q Lopez being the super of 437 Morris
10 Park, there should be corresponding pay stubs for
11 that individual, correct?

12 A I guess so.

13 Q To your knowledge Manuel Almonte,
14 you didn't know that name in 2011?

15 A I knew the guy's face and the name
16 Lopez. That's what I knew. Whatever name he
17 gave or whatever his user name was, I was not
18 tracking it.

19 MR. VALLETTI: Please mark this as
20 Plaintiff's Exhibit 4.

21 [Whereupon, the document was
22 hereby marked as Plaintiff's Exhibit 4 for
23 identification, as of this date, by the
24 reporter.]

25 Q I am showing you what has been

1 K. Almonte

2 marked as Plaintiff's Exhibit 4. It is Bates
3 number 410. Have you ever seen that ID before?

4 A No.

5 Q Do you know who that is?

6 A No.

7 Q Can you read it?

8 A Manuel Almonte.

9 Q Do you know that there is some
10 handwriting on here as to when this document was
11 received, what date is that?

12 A December 13, 2012.

13 Q Do you know why your company
14 received the identification card of Manuel
15 Almonte in December of 2012?

16 A No.

17 Q If a super at 437 Morris Park were
18 off the premises who would handle the work that
19 was needed at the building?

20 MR. WEINBERGER: Objection. You
21 can answer it.

22 A Whatever setup he had. If he had a
23 handyman there, a porter, I don't know.

24 Q Would it be a handyman doing the
25 repairs and the porter doing the cleaning,

1 K. Almonte

2 something along those lines?

3 A I don't know.

4 Q If a super had to leave the
5 premises to perform work elsewhere he was still
6 responsible for getting the work done at his own
7 building?

8 A I guess so, I don't know. The
9 mechanics of how it was set up, what he had to
10 juggle, I am not familiar.

11 Q How long have you been the owner or
12 a member of 437 Morris Park LLC?

13 A I bought it in 1997.

14 Q Since 1997 is when you began doing
15 your regular visits to the building?

16 A No.

17 Q When did you start doing those
18 regular visits?

19 A Probably in 2006.

20 Q Since 2006 you have been doing
21 regular visits to the building. You had said
22 earlier that Lopez took possession of that
23 apartment in the building in 2011. In that time
24 you never saw this individual in Exhibit 4 at the
25 premises?

1 K. Almonte

2 A I don't recall.

3 Q Take a look at his face and see if
4 you recall it in the photograph.

5 A He doesn't look familiar.

6 Q You were present for the deposition
7 of Nestor Almonte, one of the three days. During
8 that time he had testified that he lived at that
9 apartment with his family?

10 MR. WEINBERGER: Objection.

11 Finish the question. I am sorry.

12 Q Do you remember the testimony that
13 he lived at that apartment with his family?

14 A Yes.

15 Q Throughout your regular visits in
16 which you visited the basement at 437 Morris Park
17 and his family lived there you testified now that
18 you have never seen Manuel on the premises?

19 A No, I have not.

20 Q What about in any of the apartments
21 that you visited, had you ever seen Manuel, the
22 person in Exhibit 4, had you ever seen him in any
23 of the apartments?

24 A No.

25 Q Had you ever seen him outside doing

1 K. Almonte

2 any cleaning?

3 A No.

4 Q Do you know what a power washer
5 machine is?

6 A Sure.

7 Q Does 437 Morris Park have a power
8 washer on site?

9 A I think it does, but I am not sure.

10 Q Would you use a power washer to
11 clean surfaces?

12 A They never used a power washer, but
13 that's what it is made for.

14 Q Do you know how to use a power
15 washer?

16 A No.

17 Q You never gave Manuel directions on
18 how to use a power washer?

19 A No.

20 Q Have you ever given that person in
21 Exhibit 4 any directions whatsoever?

22 A I never saw the guy, to my
23 knowledge.

24 Q He lived at the premises, correct?

25 A It could be.

1 K. Almonte

2 Q Do you know who hired Lopez?

3 A Charlie.

4 Q Do you know the position that he
5 originally worked when he was hired?

6 A No.

7 Q To your knowledge when did Lopez
8 begin working outside of 437 Morris Park?

9 A I don't know. I was not involved
10 in those decisions.

11 Q Had you seen Lopez working at 1195
12 Sherman?

13 A I rarely went to 1195 Sherman.

14 Q How often did you go there?

15 A Very seldom.

16 Q Once a week?

17 A No.

18 Q Once a month?

19 A No. Maybe once a year.

20 Q Once a year?

21 A Maybe. Maybe even less.

22 Q Is there any particular reason why
23 you visited that location less?

24 A I was not involved in the ownership
25 of that building.

1 K. Almonte

2 Q What about 1101 Manor?

3 A Yes.

4 Q Had you seen Lopez working at 1101
5 Manor?

6 A Possibly.

7 Q When was the first time that you
8 saw Lopez in another building other than 437
9 Morris Park?

10 A I don't recall.

11 Q Was it in 2011?

12 A It could be any date, I don't know.

13 Q Let's try 2011. In April of 2011
14 did you see Lopez working in any other buildings?

15 A I don't recall.

16 Q September of 2011, could you have
17 seen Lopez working?

18 A I could have, I don't recall.

19 Q In 2012?

20 A The same, I don't know.

21 Q 1056 Boynton as well?

22 A Yes.

23 Q Do you know Lopez' rate of pay when
24 he was first hired?

25 A No.

1 K. Almonte

2 Q Is there a standard rate of pay
3 used when someone is hired for a particular
4 position, let's say a super, is there a standard
5 rate of pay?

6 A I have no idea.

7 Q Are you familiar with the hours the
8 super works?

9 A No.

10 Q Are you familiar with the
11 responsibilities of a super?

12 A Yes.

13 Q To your knowledge what is your
14 understanding of the responsibilities of a super?

15 A To be available for emergencies in
16 the building at all times.

17 Q A super is essentially an on-call
18 employee?

19 A To respond to whatever emergencies.

20 Q Do you know what on-call means?

21 A No.

22 Q Do supers have company issued
23 phones?

24 A Right.

25 Q Is that a yes?

1 K. Almonte

2 A Yes.

3 Q Did Lopez have a company issued
4 phone?

5 A Sure.

6 Q Do you know the number of that
7 phone?

8 A I have it on my phone if I still
9 have it. Let me look. 347-847-7187. That might
10 be the number. That's the last number that I
11 have. Whenever he called me I called back that
12 number.

13 Q When you said they, being the
14 supers, have to be available for emergency calls,
15 what did you mean by an emergency call?

16 A A super needs to be in the building
17 to be available for an emergency. I don't know
18 if it means on the phone or whatever it is. If
19 there is a leak, a clogged toilet.

20 Q Is it your understanding that
21 emergency calls occur after regular hours?

22 A I don't know. I am not familiar
23 with exactly how that is handled. The super has
24 to be available for emergencies. I don't know
25 the times.

1 K. Almonte

2 Q Do you know the regular hours of a
3 superintendent in 437 Morris Park?

4 A I don't know. I am not familiar.

5 Q What about a superintendent in 1056
6 Boynton, the hours, do you know their hours?

7 A I don't know. I am not involved in
8 the employment arrangement, how that works. I
9 just come to make sure that the repairs are done
10 and if not I reach out to Charlie. He manages
11 the employees. If he has any questions what is
12 right or what is wrong we use Stuart to ask him.
13 That's it.

14 MR. WEINBERGER: That's
15 attorney-client. Try to leave me out.

16 MR. VALLETTI: Let's take a quick
17 break.

18 [Whereupon, after a short recess
19 was taken, the following was had:]

20 CONTINUED EXAMINATION

21 BY MR. VALLETTI:

22 Q Who is the super at 1195 Sherman
23 currently?

24 A I don't know.

25 Q What about in 2013?

1 K. Almonte

2 A I don't know.

3 Q 1101 Manor, who is the super in
4 that building currently?

5 A I know him by face. In my phone I
6 have the numbers and the buildings and I call
7 them and say hello. I don't know his name. I
8 know what he looks like.

9 Q How they are labeled in your phone
10 is just by the number of the building?

11 A Yes.

12 Q 1056 Boynton, same story, who is
13 the super in that building?

14 A Wilton. I know him.

15 Q Do you know his last name?

16 A No.

17 Q If I said Munoz, would that ring a
18 bell?

19 A It makes sense.

20 Q He is currently the superintendent?

21 A No, he is actually leaving the
22 building Sunday.

23 Q Why is he leaving the building?

24 A He had an incident with a client
25 and the City wanted us to terminate him and we

1 K. Almonte

2 terminated him.

3 Q When you say the City wanted you to
4 terminate him --

5 MR. WEINBERGER: Objection this is
6 really far afield from this case.

7 Q When you say the City wanted him
8 terminated, what do you mean by that?

9 MR. WEINBERGER: Objection.
10 Normally Federal and State you don't
11 object. This has nothing to do with this
12 case, nothing to do with the wages
13 owed. There has to be some point where you
14 have to draw the line.

15 Q When you say the City wanted him
16 terminated, what do you mean?

17 MR. WEINBERGER: We are not going
18 to answer that. I know in the Federal
19 rules you are not supposed to, but this is
20 the one where we will draw the line. It
21 has nothing to do with this case.

22 MR. VALLETTI: Are you directing
23 him not to answer?

24 MR. WEINBERGER: Yes. If we need
25 a ruling on it we will certainly go to the

1 K. Almonte

2 judge on this one.

3 MR. VALLETTI: Please mark it for a
4 ruling.

5 Q Do you know of any relationship
6 between Wilton Munoz --

7 A I know that there is, but I don't
8 know the relationship.

9 Q Back to 437 Morris Park, for the
10 time period from 2011 to 2013 who lived in the
11 basement, that basement apartment?

12 A The superintendent.

13 Q Do you know anyone else that lived
14 in that basement, was there a family there?

15 A The super moves in with his family.

16 Q Do you know how many people are in
17 his family?

18 A No.

19 Q Had you ever met his wife?

20 A No.

21 Q How about his daughter?

22 A No.

23 Q His son?

24 A No.

25 Q In terms of work actually performed

1 K. Almonte

2 at 437 Morris Park, can you definitively state
3 that Manuel, Nestor Almonte's son, never
4 performed work in that building?

5 A I never saw him, I don't know. As
6 far as I know Lopez did the work over there. I
7 don't know of anybody else besides whoever we
8 hired. Charlie would know, he is the right guy
9 to ask.

10 Q You would not be able to tell me
11 one way or the other if Manuel did work in the
12 building?

13 A I wouldn't know.

14 Q In terms of the supers, do you know
15 how they are paid between salary and hourly?

16 A It is an hourly rate.

17 Q They are not paid a flat fixed rate
18 per week?

19 A I don't think so. I am not
20 familiar with that. If you are telling me hourly
21 or flat I remember it is hourly.

22 Q Is it based on a punch in and punch
23 out record or what is the pay based on for the
24 super?

25 A I don't know. There were time

1 K. Almonte

2 sheets and they are paid by the hour, there is
3 overtime, all kind of stuff. I am not familiar
4 with it. I never got bogged down with that.
5 Charlie dealt with that.

6 Q You said that they were paid
7 overtime, the supers. You did say that, correct?

8 A It is familiar to me hearing these
9 things, the hourly rate, what is overtime. I
10 know they were busy with that. I don't know the
11 formula or what, when, where, how many hours, I
12 don't know.

13 Q In terms of the super's
14 compensation, the apartment that they received,
15 that wasn't attributed towards overtime, correct?

16 A I have no idea.

17 Q To your knowledge did you give a
18 limit at 437 Morris Park as to how much the
19 payroll could be?

20 A No.

21 Q Charlie basically had the entire
22 discretion of who to hire and fire?

23 A Yes, basically.

24 Q Did Charlie also control how much
25 that person was paid?

1 K. Almonte

2 A Yes. He would run it by us, but we
3 gave him the discretion.

4 Q In terms of the payroll company,
5 you testified earlier you don't know who they
6 are?

7 A Correct.

8 Q Charlie was the person in charge of
9 the payroll as far as you knew?

10 A Yes.

11 Q He was the person who could
12 determine this person needed X amount of hours
13 for regular pay and X amount of hours for its
14 overtime, correct?

15 A He took care of the payroll,
16 whatever the payroll was. If he had any legal
17 questions we asked him.

18 Q Do you know the process how he
19 determined whose hours?

20 A No.

21 Q You don't know if he based his
22 calculations on actual hours worked or if there
23 was another component to the pay?

24 A I have no idea.

25 Q How about in terms of actual

1 K. Almonte

2 payment, who signed the checks for employees to
3 get paid, was that Charlie Clark also?

4 A I think Abraham signs the checks,
5 but I am not sure. It could be that Charlie did.

6 Q Did Charlie have the authority to
7 sign checks on behalf of 437 Morris Park?

8 A I am not sure.

9 Q Do you know if Charlie had
10 authority to sign checks on behalf of any of the
11 entities?

12 A I am not sure, I don't know.

13 Q Did you ever review the payroll?

14 A No.

15 Q Never once?

16 A No.

17 Q That's for 437 Morris Park,
18 correct?

19 A Correct.

20 Q Presumably, if a person worked for
21 your company there should be pay stubs
22 accompanied by that person's employment, correct?

23 A Yes.

24 Q Not just employee detailed
25 earnings, but your company, 437 Morris Park,

1 K. Almonte

2 generates actual pay records, correct?

3 A However the arrangement is with the
4 payroll company.

5 Q To your knowledge does your company
6 have direct deposit?

7 A I have no idea.

8 Q Are you related to Charlie Clark?

9 A No.

10 Q How do you know him other than with
11 work?

12 A We grew up in the same town when we
13 were kids.

14 Q Who hired Charlie to work for 437
15 Morris Park?

16 A Abraham.

17 Q Do you know when that occurred?

18 A I think in 2005 or 2006, if I
19 remember correctly.

20 Q Were you ever contacted for
21 emergencies in the building from a City agency?

22 A Yes.

23 Q How would they contact you?

24 A On my cell.

25 Q Who was the main person that

1 K. Almonte

2 contacted you from the City?

3 A Anywhere from the Commissioner to
4 an analyst.

5 Q Once you were contacted from the
6 City for an emergency, what would you do next?

7 A Contact the building or contact
8 Charlie, do what needs to be done to get this out
9 of the way.

10 Q Could you receive these types of
11 calls at all hours?

12 A Usually it was in a normal hour.
13 If a building was without heat or hot water I
14 could get it at any time in the night.

15 I could get a call from a Deputy
16 Commissioner at 2:00 in the morning. Usually the
17 phone calls pertained to access of families
18 coming in, contact security, stuff like that, but
19 as far as repairs, probably only in the normal
20 business hours.

21 Q When you say repairs, what do you
22 mean by actual repairs?

23 A If the ceiling falls down and a
24 client reached out to client advocacy and it went
25 to the top and went to the Mayor's office. This

1 K. Almonte

2 type of stuff happens and they call you directly
3 and it is a priority. It needs to be done. We
4 need pictures, need to be sent back, need to know
5 it was taken care of.

6 Q If it is priority, no matter what
7 time of day it is, it has to be taken care of?

8 A Yes, but that usually happens
9 within normal business hours. I don't recall
10 that it ever happened -- I don't think they
11 would expect us to get up and start sheet rocking
12 apartments at 2:00 in the morning. Anything that
13 was required they would call us.

14 Q Are you familiar with a hotline for
15 emergency calls?

16 A Yes.

17 Q What is the hotline?

18 A The hotline is we have a sticker in
19 every unit in the building that the clients, if
20 they have any building related emergency they can
21 call that number. The building manager gets it
22 and I see it so we know what is going on and we
23 can track if it was taken care of or not.

24 Q Would you get a message from the
25 hotline?

1 K. Almonte

2 A On my BlackBerry.

3 Q You have the Blackberry and your
4 personal cell phone?

5 A Yes.

6 Q Both are used for business
7 purposes?

8 A Yes.

9 Q In terms of the emergency calls,
10 you said the manager also gets them, correct?

11 A From whom?

12 Q The hotline calls?

13 A Yes, sure.

14 Q Those can occur at any time of day?

15 A Sure. People can call at 2:00 in
16 the morning that their toilet is clogged,
17 absolutely. We will not respond until morning.

18 Q Who do you mean by we?

19 A The manager or -- I would not
20 consider it something that needs to be taken care
21 of if a client decided that their bulb needs to
22 be changed at 2:00 in the morning, that's
23 something that is left for the morning.

24 Q What kind of things would you
25 consider personally to be an emergency that

1 K. Almonte

2 needed to be taken care of?

3 A Fire, smelling of smoke, gas leak,
4 no heat in the building, things of that nature.

5 Q Charlie received those same types
6 of calls, correct?

7 A Yes.

8 Q Charlie could have assigned those
9 at any time, correct?

10 A Yes.

11 Q To your knowledge, you don't know
12 whether Charlie would forward those calls
13 immediately to a super of a building, say the
14 super at 437 Morris Park?

15 A I don't know what he did. I don't
16 think he would consider waking somebody up in the
17 middle of the night for something that could wait
18 until the morning. He had the discretion to do
19 what needs to be done. You should ask him.

20 Q If he forwarded something and it
21 said it needed to be taken care of, regardless if
22 it was an emergency or he needed it to be done
23 immediately, if he forwarded something to someone
24 and they took care of it should that person be
25 paid?

1 K. Almonte

2 A Whatever the arrangement of his job
3 is to be paid. If it is not regular hours,
4 overtime, I don't know. I was not involved in
5 that setup. People are not slaves, they have to
6 be compensated. It is either regular pay or
7 overtime pay. I don't know when the call came in
8 and what needed to be done.

9 Q Do you know what the minimum wage
10 rate is right now?

11 A No.

12 Q Do you know what it was back in
13 2011?

14 A No.

15 Q Do you know what a proper
16 calculation for overtime is?

17 A No, I don't know.

18 Q Have you ever been named as a
19 defendant in another lawsuit?

20 A Probably. Own buildings, slip and
21 falls, all kind of stuff. It could be that I
22 would not know.

23 Q Does the first name German ring a
24 bell?

25 A No.

1 K. Almonte

2 Q Were you ever sued by a man named
3 German?

4 A I don't recall.

5 Q Have you ever been sued personally
6 for failure to pay overtime?

7 A Not that I know of.

8 Q Have you ever sued personally for
9 failure to pay a minimum wage?

10 A Not that I know of. I would know
11 something that I have to pay. If I have to pay
12 it then I would remember. I don't know. People
13 allege things all the time, I don't know.

14 MR. VALLETTI: Off the record.

15 [Whereupon, a discussion was held
16 off the record.]

17 MR. VALLETTI: Please mark these as
18 Plaintiff's Exhibits 5 and 6.

19 [Whereupon, the documents were
20 hereby marked as Plaintiff's Exhibits 5 and
21 6 for identification, as of this date, by
22 the reporter.]

23 Q I am going to show you what has
24 been marked here, there are two exhibits. Let's
25 start with Plaintiff's Exhibit 5. This is a

1 K. Almonte

2 Complaint, Amended Complaint.

3 Mr. WEINBERGER: You should take a
4 look. I don't know if you know about it.
5 Off the record.

6 [Whereupon, a discussion was held
7 off the record.]

8 Q Are you familiar with this
9 document?

10 A No.

11 Q Do you know what this document
12 says?

13 A It is a lawsuit.

14 Q What is the nature of that lawsuit?

15 A Unpaid overtime.

16 Q It is an unpaid overtime lawsuit.
17 Who initiated that suit?

18 A Ernesto Hernandez and Gloria Sacta.

19 Q Who is Ernesto Hernandez?

20 A I don't know.

21 Q Was he the super at one of your
22 buildings?

23 A I don't know, I wouldn't know.

24 Q Who wouldn't you know?

25 A The name is not familiar, I don't

1 K. Almonte

2 know.

3 Q Did you ever receive a copy of this
4 document?

5 A It could be.

6 Q Looking at Paragraph 18, what does
7 it say Mr. Hernandez wants?

8 A He worked for the defendants as a
9 porter.

10 Q In paragraph two does what it say
11 he became after being a porter?

12 MR. WEINBERGER: Objection as to
13 the relevance.

14 Q In front of you is a lawsuit for
15 unpaid overtime. What year was this started, if
16 you know?

17 A May 31, 2012.

18 Q In May you were sued for unpaid
19 overtime?

20 A Yes.

21 Q Do you know what the disposition of
22 that case was?

23 A No.

24 Q I will show you what was marked as
25 Plaintiff's Exhibit 6. I will show it to your

1 K. Almonte

2 attorney first. Please take a look at that.

3 A Okay. We paid? I don't remember.

4 Q Have you ever seen this document
5 before?

6 A No.

7 Q I will turn your attention to
8 Page 11.

9 A These are my signatures.

10 Q They are all your signatures?

11 A Yes.

12 Q You signed for the name of
13 Mr. Tabak?

14 A Yes.

15 Q You signed for new Hope Funding
16 LLC?

17 A Yes.

18 Q You signed for 1195 Sherman LLC?

19 A Yes.

20 Q You signed for 1056 Boynton?

21 A Yes.

22 Q You signed for 437 Morris Park LLC?

23 A Yes.

24 Q Why did you sign for 1195 Sherman
25 LLC?

1 K. Almonte

2 A (No response.)

3 Q Are you an officer of that company?

4 A I have to see exactly how it was
5 set up. It is a lease. The other buildings I
6 own together with Abraham, that building is a
7 lease. We created this 1195 Sherman LLC that
8 basically is the lease holder of the building. I
9 don't know exactly what is what.

10 Q Do you know the terms of the lease?

11 A No.

12 Q Do you know the length of the
13 lease?

14 A The lease is up for renewal now in
15 the summer.

16 Q Is it a term lease?

17 A Yes, I think so. I think they are
18 negotiating now.

19 Q Are you a party to that agreement
20 that is the lease?

21 A Yes, I don't recall exactly.
22 Abraham had a relationship with the owner and it
23 was really something that he did. I don't know
24 exactly how it was set up.

25 Q Do you even know what your position

1 K. Almonte

2 is at 1195 Sherman LLC?

3 A Not really. I will have to find
4 out. We spoke about this earlier, we will find
5 out.

6 Q What is new Hope Funding, LLC?

7 A That's the company that -- there
8 is a City contract with a non-profit and then the
9 non-profit pays new Hope to do the maintenance
10 for different buildings.

11 Q The City pays New Hope Funding LLC?

12 A No. They pay it to a non-profit
13 and the non-profit pays New Hope Funding.

14 Q What is the name of the non-profit?

15 A Aguila.

16 Q Is that a contracting service, are
17 they contractors?

18 A They are contracted by the City of
19 New York. We are the landlord and we do the
20 maintenance.

21 Q Does 437 Morris Park have a
22 contract with Aguila?

23 A I am not sure.

24 MR. VALLETTI: To the extent that
25 there is one I will demand that that be

1 K. Almonte

2 produced.

3 MR. WEINBERGER: We will take it

4 under advisement.

5 Q To your knowledge does New Hope

6 Funding LLC have a contract with Aguila?

7 A That's what I am saying, I don't

8 know.

9 Q Does any contract exist between 437

10 Morris Park and New York City directly?

11 A No.

12 Q The middleman of sorts would be the

13 New Hope Funding LLC?

14 A Yes.

15 MR. WEINBERGER: Let me hear that

16 question again.

17 [Whereupon, the requested portion

18 of the record was hereby read by the

19 reporter.]

20 A We have a few buildings, me and

21 Abraham, and on specifically these four Aguila

22 has a contract on these four buildings and they

23 are contracted by the City. Their relationship,

24 Aguila's relationship with us, is with New Hope

25 Funding and New Hope Funding has a relationship

1 K. Almonte

2 with these four buildings, so Aguila pays New
3 Hope Funding and then New Hope Funding pays the
4 buildings and pays the employees.

5 Q New Hope Funding pays the
6 employees?

7 A Yes, I think so. No, maybe not.
8 New Hope Funding pays the building and the
9 building pays the employees, whatever.

10 Q Do the buildings handle their own
11 payroll?

12 A I think so. All these payroll
13 issues and things is something that Charlie
14 knows. I am not familiar with exactly how things
15 flow.

16 Q Going back to Plaintiff's Exhibit
17 6, turning your attention to the second page,
18 paragraph one, there was a settlement amount
19 paid?

20 A Yes.

21 Q Are you familiar with this
22 settlement amount?

23 A I remember it now, yes.

24 Q That was for what in particular?

25 MR. WEINBERGER: Objection.

1 K. Almonte

2 A Whatever the lawsuit was.

3 Q It was \$11,000 paid for unpaid

4 overtime?

5 MR. WEINBERGER: Objection.

6 A I have no idea. My attorney knows

7 better than me.

8 MR. WEINBERGER: I can't testify.

9 A What was the \$11,000 for?

10 MR. WEINBERGER: I can't tell you.

11 If you don't know, you don't know. I can't

12 testify.

13 Q Other than the suit instituted by

14 Ernesto Hernandez and Gloria Sacta are you aware

15 of any other lawsuits for any kind of wage

16 violations?

17 A No.

18 Q What type of building is 437 Morris

19 Park?

20 A An apartment building.

21 Q Specifically who does it house?

22 A Homeless families.

23 Q You said earlier that you receive

24 City funding. What department from the City do

25 you receive the funding from?

1 K. Almonte

2 A New York City Department of
3 Homeless Services.

4 Q Which bank handles the accounts at
5 437 Morris Park in terms of payroll?

6 MR. WEINBERGER: Objection to the
7 banks.

8 MR. VALLI: That's totally proper
9 and you know it.

10 MR. WEINBERGER: Answer the
11 question.

12 A Chase.

13 Q Who are the signatories on the
14 account?

15 A Abraham Finkelstein and myself.

16 Q You said earlier that people in
17 this business have user names. What is your user
18 name?

19 A Kalman Tabak, I don't like to have
20 a user name.

21 Q Do you know if Lopez had a user
22 name?

23 A So many different names, I don't
24 know.

25 Q To your knowledge did Lopez work at

1 K. Almonte

2 any of the other buildings other than the ones
3 you mentioned today?

4 A I wouldn't know. I don't know what
5 he decided to do and what he did.

6 Q If Charlie took a vacation who
7 would run 437 Morris Park?

8 MR. WEINBERGER: Objection to the
9 form. You can answer it if you know.

10 A I don't know.

11 Q Would you manage the building?

12 A I would be on top of the
13 complaints. I would continue doing whatever I
14 did. I would watch to see if there is any
15 potential liability and I would probably manage
16 the building.

17 He went away -- if he went away
18 for a few days I just made sure to continue
19 monitoring. I don't think anything really
20 changed.

21 Q You said liability, what do you
22 mean by liability?

23 A To me the liabilities are if there
24 are complaints that are not taken care of it is a
25 major issue in this case.

1 K. Almonte

2 Q You want to get the complaints
3 taken care of as quickly as possible?

4 A Yes.

5 Q That includes night calls?

6 A I don't remember so much night
7 calls. It is more or less what happens
8 throughout the day. If there was a City
9 inspector that walked in and saw something I
10 would get a phone call that it needs to be taken
11 care of and a follow-up indicating it was done.

12 It was not so much night calls. It
13 was more me trying to make sure that the
14 relationship I have with the City is not being
15 severed by the nature of complaints not being
16 taken care of. That's the focus of what I do.

17 Q Have you ever appeared before the
18 unemployment insurance appeal board for any
19 employee who filed an unemployment case or claim
20 against you or your company?

21 A I was called in to testify, but I
22 never had the opportunity.

23 Q Prior to that particular instance
24 you had not been in front of the Board?

25 A No.

1 K. Almonte

2 Q Do you have any knowledge of any
3 employee filing employment claims against 437
4 Morris Park in the past year?

5 A Lopez filed.

6 Q You didn't get to testify, correct?

7 A No, I didn't. I met you over
8 there.

9 Q There came a time when Lopez'
10 employment with the company ended; is that
11 correct?

12 A Yes.

13 Q When was that?

14 A I don't know the exact date.

15 Q Was it sometime in 2014?

16 A I think it was in 2013.

17 Q Beginning or end of 2013?

18 A I think it was towards the end of
19 2013.

20 Q Did he complain that he was not
21 getting paid for hours that he worked?

22 A No.

23 Q To your knowledge?

24 A No. He could have reached out to
25 me. That means if he felt mistreated or anything

1 K. Almonte

2 he would reach out to me in general that like if
3 he was not happy.

4 I would call Charlie and see if he
5 can make him happy, whatever it is, let's keep
6 everybody happy. That's the nature me getting a
7 call from him and me calling Charlie. He never
8 spoke to me about not getting paid.

9 Q Did you terminate Lopez?

10 A No, he decided that he wants to
11 leave.

12 Q From where?

13 A I think first it was 1195 Sherman
14 and then soon after that 437 Morris Park.

15 Q Why did he decide to leave?

16 A He was getting pressure from us on
17 1195 Sherman that work was not getting done and
18 he said he can't do it, so he is going to stop
19 it.

20 Q Do you know what he was getting
21 paid at that time?

22 A No. There was some arrangement and
23 that stopped. He said he was just going.

24 Q An arrangement that they had had
25 stopped and he decided to resign?

1 K. Almonte

2 A Completely, no. First he quit from
3 1195 Sherman because we were asking him about
4 complaints that were not getting done and soon
5 after that he said he was done.

6 Q When you say the calls were not
7 getting done, had you ever had any issues with
8 him not performing his work before?

9 A I think I was hearing from Charlie
10 in the last period that things were not getting
11 done. Charlie used to tell me if I see him to
12 try to see to it that he gets his work done.

13 Q Charlie asked you to get Lopez to
14 get his work done?

15 A Charlie could ask me sometimes,
16 maybe if they got into -- if they locked horns
17 he could call me and say if I see him, you know,
18 we were constantly trying to make him happy and
19 keep him going, you know.

20 That's basically the job of an
21 employee dealing with the grievances of the
22 workers and trying to move it along.

23 Q What grievances did Lopez have?

24 A Maybe how he was treated or he was
25 under too much pressure, too much work, too much

1 K. Almonte

2 this, you know. He was looking for a raise, you
3 know.

4 Our policy was if it is reasonable
5 and if this is really what is going to make him
6 happy, that's the discretion that we gave Charlie
7 all along, you know. We didn't want to be
8 involved in the \$50 or the \$100. We didn't want
9 to get involved with that, we were involved in
10 something larger.

11 Q What do you mean something larger?

12 A I was more in the picture that the
13 business should move smooth, not get jammed up
14 with this -- I mean the bigger picture.

15 I was not involved in the details.
16 My answer to Charlie was is this going to make
17 him happy or resolve the issue and then we are
18 done.

19 Q Earlier you said there was some
20 sort of arrangement. What do you mean by that?

21 A I know he was being compensated for
22 1195 Sherman as well. I don't know what that
23 was. When he stopped working there, when he quit
24 there that arrangement ended. Soon after he quit
25 437 Morris Park. I don't know exactly what the

1 K. Almonte

2 arrangement was or compensation.

3 Q How did he quit?

4 A He said it was too much and he was
5 not doing it anymore.

6 Q Too much what, work, did he say he
7 was not getting paid for the work?

8 A No, he never said that.

9 Q When did he say he had too much
10 work?

11 A When I approached him with 1195
12 Sherman. We were getting a lot of pressure. He
13 said he does it or somebody else. I said to
14 finish up with the complaints. He said it was
15 too much for him and he couldn't do it.

16 Q When was that?

17 A It was all the same period when he
18 quit. The end of 2013 or the middle, you know, I
19 don't know. I don't know the dates.

20 Q Where did that conversation occur?

21 A In the lobby of 437 Morris Park and
22 then he was upset. Then I tried to -- that day
23 I reached out to him to maybe think it over. I
24 was trying to calm him down. I thought maybe he
25 wanted to reconsider. That was it.

1 K. Almonte

2 Q That was the end of his employment
3 for which company?

4 A It went in two stages. First it
5 was 1195 Sherman and soon after was Morris Park.
6 I don't remember the exact date.

7 Q He quit his job at 1195 Sherman?

8 A Yes.

9 Q What about his job at 437 Morris
10 Park, did he quit that job as well?

11 A Yes, he quit that to Charlie.
12 Charlie called me because he panicked. I said I
13 would talk to him. A day later I think he did
14 change his mind, I don't know exactly. I just
15 remember that was a whole ta-du.

16 Q Charlie called you when he quit?

17 A Yes.

18 Q You were not with Charlie when he
19 quit?

20 A Maybe I was in the building or
21 maybe I worked outside. I just remember I spoke
22 to him on the phone and I said I was going to
23 come back and try to talk to him.

24 Q Do you maintain an office
25 personally?

1 K. Almonte

2 A No.

3 Q Do you work out of your car?

4 A My pants (indicating) --

5 MR. WEINBERGER: He didn't mean it
6 literally.

7 Q Aguila, do they mainly handle
8 furniture?

9 A The actual maintenance of the
10 apartments, plastering, painting, repairs, they
11 do everything else.

12 Q The things that are left are for
13 who to complete, the super, the handyman, the
14 porter?

15 A Yes.

16 Q Aguila does the major construction?

17 A No, no. Aguila takes care of the
18 window shades and the furniture and the linen and
19 we do the actual maintenance in the apartment.

20 Q If a ceiling collapses, who handles
21 that?

22 A That's me.

23 Q The super would be responsible for
24 that?

25 A Yes.

1 K. Almonte

2 Q The basement apartment at 437
3 Morris Park, does that have exposed piping over
4 head?

5 A It could be.

6 Q Is that a yes or no?

7 A I think it does. Basement
8 apartments usually do.

9 Q It doesn't have a fire escape, does
10 it?

11 MR. WEINBERGER: Objection to
12 relevance.

13 A The windows are about 16 inches off
14 the sidewalk. The second means of egress is on
15 the windows like every apartment.

16 Q Do you know who owns Aguila?

17 A It is a non-profit organization.

18 Q There is no owner?

19 A They have a board, I don't know.

20 Q Do you know who is on the board?

21 A No.

22 Q You are not on the board?

23 A No.

24 Q Do you know who owns New Hope
25 Funding?

1 K. Almonte

2 A Me and Abraham, I think.

3 Q Any other employees for that
4 company?

5 A Not that I know of.

6 Q Is Charlie still employed with 437
7 Morris Park?

8 A No.

9 Q Why not?

10 A He decided that he is going into
11 another business.

12 Q When did he decide that?

13 A We were working on building up a
14 new business for him that we are going to be
15 involved with. I don't know if I should talk to
16 you about his personal plans.

17 Q You had a conversation with him
18 about this, correct?

19 A About what?

20 Q How did his employment with 437
21 Morris Park end?

22 A He was thinking all along he wanted
23 to go into business on his own. You know, the
24 time is right to start something and he will
25 start something.

1 K. Almonte

2 Q What is he starting?

3 A An exterminating business.

4 Q Charlie is no longer employed by
5 437 Morris Park?

6 A No.

7 Q What about for 1195 Sherman?

8 A No, none of those buildings. He is
9 going into the new business.

10 Q He is no longer affiliated with
11 1195 Sherman, 437 Morris Park, 1056 Boynton and
12 1101 Manor?

13 A No.

14 Q Who manages the building now at 437
15 Morris Park?

16 A Mark Sherman.

17 Q Do you know when he took over that
18 position?

19 A I can get the dates if you want.

20 MR. VALLETTI: Please provide them
21 later.

22 Q Were you aware if Lopez had a
23 Social Security number?

24 A No.

25 Q Did he ever tell you that he didn't

1 K. Almonte

2 have a Social Security number?

3 A No.

4 Q Did he ever tell you that he didn't
5 have any papers to work in the United States?

6 A No.

7 Q You employed a large number of
8 Hispanic individuals; is that correct?

9 A Yes.

10 Q At 437 Morris Park there are many
11 Hispanic workers?

12 MR. WEINBERGER: Objection. You
13 can answer it.

14 A Whatever it is. Whatever is needed
15 in the building.

16 Q When you speak to a worker who does
17 not speak English how do you communicate with
18 them?

19 A They all understand enough English
20 to communicate. I never had an issue with
21 communicating in English with them what needs to
22 be done.

23 Q In 2012 you could approach a
24 handyman in 437 Morris Park and tell him what he
25 needs to do and he would understand?

1 K. Almonte

2 A Any handyman, he knows what a pipe
3 is, what a toilet is, what a kitchen is, what a
4 faucet is, general trade terms that are needed.

5 Q You personally never had a problem
6 with giving an order to somebody in English?

7 A Not that I can recall, no.

8 Q You are not involved in the hiring
9 and firing process?

10 A No.

11 MR. VALLETTI: I have nothing
12 further. Thank you very much.

13 EXAMINATION BY

14 MR. WEINBERGER:

15 Q 437 Morris Park, does it still have
16 any residents there, you said it is a homeless
17 shelter, are there any residents left, if you
18 know?

19 A Maybe a few.

20 Q Going back to Plaintiff's Exhibit
21 4, did you ever see this individual work at 437
22 Morris Park?

23 A I didn't see him at all work for
24 sure.

25 Q At any building?

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A No. I answered that.

MR. WEINBERGER: Nothing further.
Thank you very much.

[Whereupon, the examination of the
witness was concluded at 1:00 p.m.]

KALMAN TABAK

Subscribed and sworn to
before me this ____ day
of _____, 2015.

Notary Public

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I N D E X

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*Exhibits were retained by counsel

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CERTIFICATION

STATE OF NEW YORK)

: SS.:

COUNTY OF NASSAU)

I, KAREN ZAMMIT, a Notary Public for and
within the State of New York, do hereby certify:

That the witness(es) whose testimony as
herein set forth, was duly sworn by me; and that
the within transcript is a true record of the
testimony given by said witness(es).

I further certify that I am not related to
any of the parties to this action by blood or
marriage, and that I am in no way interested in
the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this 3rd day of March, 2015.

KAREN ZAMMIT

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Signature of Witness

Sworn to before me this _____
day of _____, 2015.

NOTARY PUBLIC